



## City of Tigard Memorandum

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**To:** Tigard Planning Commission

**From:** John Floyd, Associate Planner

**Re:** DCA2014-00002 Marijuana Facilities (Continued from January 12, 2015)

**Date:** February 2, 2015

On January 12, the Planning Commission considered marijuana facility regulations under a package of text amendments to the Tigard Development Code. In response to public testimony and subsequent deliberation, the Commission requested additional information before continuing the hearing. Specific issues identified by the Planning Commission are addressed below, followed by a list and summary of additional public comments received after the hearing and options for moving forward.

When considering the following questions and analysis, the Planning Commission may wish to keep in mind that the legal marijuana economy is still maturing, with many unknown issues and a dynamic regulatory environment at both the state and federal level. The OLCC is presently conducting “listening sessions” as they undergo new rulemaking regarding where and how recreational facilities will be allowed to operate, Governor Kitzhaber has requested the legislature address specific issues related to marijuana as part of the 2015 session, and a new presidential administration will take office in 2 years. As a result, the Commission may wish to act conservatively until OLCC and Federal regulations become more clear and stable.

Restated, the proposed text amendments are only a “first step” in what may become an ongoing adjustment process for all levels of government. As such, it may be preferable to allow room in the future to expand locations available for marijuana facilities through cautious restrictions in the near term, rather than retroactively increasing regulations and potentially voting to render license holders non-conforming at some future date.

### **Introduction to Measure 91**

To help the Planning Commission understand what Measure 91 is and what it means for cities like Tigard, the following documents are included with this memorandum as Attachments 1 and 2 respectively.

- Measure 91: What it Means for Local Governments; League of Oregon Cities, November 2014.
- Control, Regulation, and Taxation of Marijuana and Industrial Hemp: Presentation to Legislative Task Force on OLCC; November 19, 2014.

It should be noted that the Oregon Medical Marijuana Dispensary Program remains unaffected by Measure 91. In addition to minimum security and operational requirements discussed elsewhere in this memorandum, the following location restrictions currently apply to medical marijuana dispensaries:

- Must be located in an area zoned for commercial, industrial, mixed use, or as agricultural land.
- A dispensary may not be located within 1,000 feet of a school (Private or public, primary, secondary, or career), within 1,000 feet of another registered dispensary, and may not be at an address registered with the Oregon Medical Marijuana Program as a grow site.
- Grow sites serving dispensaries must also be registered with the state.

#### **Definition of permanent structure?**

For purposes of clarity, staff proposes the following definition: “Permanent building: A non-mobile structure with a roof supported by columns or walls, and attached to a permanent foundation or footings.”

#### **What does a 1,000 foot buffer from residential zones and the park zone look like?**

##### **Can the buffer be reduced to 300 feet?**

At the Commission’s request, staff amended the buffer maps to increase the distance from residential zones and parks from 500 feet to 1,000 feet. As anticipated and demonstrated in Attachment 3, the increased buffer has a significant impact on the number of parcels eligible to host a marijuana facility, but sufficient parcels still remain for multiple businesses to operate within the city. The Planning Commission must determine whether or not such a distance is a “reasonable restriction” on marijuana facilities.

As detailed in Attachment 1 of the staff report, staff recommended a 500 foot buffer on January 12 due to rough equivalencies identified in Tigard’s “Adult Entertainment” regulations and restrictions adopted by other local governments in Oregon. A lesser buffer area would not conflict with state requirements, but could result in undesired community impacts occurring closer to homes and public spaces.

#### **Reducing the concentration and/or number of marijuana facilities.**

Concern was expressed on January 12 regarding the possible concentration of businesses along a particular corridor or in a particular area of Tigard. To address this outcome, the City could restrict the concentration and number of marijuana facilities by increasing the minimum buffer distances between medical marijuana dispensaries from 1,000-feet to 2,000-feet, and applying the same standard to all marijuana facilities.

To help judge the effect of a 2,000 foot minimum separation standard with the City, it should be noted that the approximate length of Pacific Highway between the Portland Boundary and the Pacific Highway/217 interchange is approximately 6,000 feet, leaving room for only 1 or 2 facilities along that corridor. Similarly, the Tigard Triangle measures approximately 4,000 feet on the east-west axis, and approximately 7,500 feet on the north-south axis, leaving sufficient room for multiple businesses without an undue concentration.

**Prohibition of marijuana facilities in zones that allow residential land uses.**

Concern was expressed regarding the impact of marijuana facilities on residents living in zones allowing both commercial and residential occupancies. A review of allowed land uses in Tigard's twelve commercial zones and three industrial zones, revealed that residential land uses are allowed in all but four. Even the C-G: General Commercial Zone, which contains a large percentage of the City's retail and service uses along Pacific Highway and I-5, allows multi-family development through planned development review.

The four zones that exclude all residential land uses include the following:

- C-N: Neighborhood Commercial Zone
- I-P: Industrial Park Zone
- I-L: Light Industrial
- I-H: Heavy Industrial

To help illustrate the distribution of these zones, a map has been created to show their location with the city, and is included as Attachment 4. The map also includes the C-G: General Commercial zone for comparison, for comparative purposes.

Were the planning commission to restrict marijuana facilities to just these four zones, the full spectrum of marijuana facilities would still be allowed to operate within the city, as detailed in the table below. This would include growing, processing, distribution, retail, and any associated "clinics" or laboratories.

<b>Zone</b>	<b>Retail</b>	<b>Office</b>	<b>General Industrial</b>	<b>Light Industrial</b>	<b>Wholesale Sales</b>
<b>C-N</b>	P	P	N	N	N
<b>I-P</b>	R <sup>1</sup>	P	N	P	R <sup>2</sup>
<b>I-L</b>	N	N	P	P	P
<b>I-H</b>	N	N	P	P	P

*P = Permitted R = Restricted (see notes below) N = Prohibited*

1. *Cannot exceed 20% of entire square footage within a development complex. Maximum of 60,000 square feet of gross leasable area per building or business.*
2. *Permitted if all activities, except employee and customer parking, are wholly contained in the building.*

When deliberating upon this question, the Planning Commission may wish to take the following facts into consideration:

- The only parcels zoned C-N are within 1,000 feet of a school (Conestoga Middle School), and are unlikely to have a marijuana facility approved for that location.
- As demonstrated in the table above, medical marijuana dispensaries and all four OLCC licenses specified in Measure 91 would be allowed in this combination of zones, albeit fewer when compared to the staff proposal.
- The City's industrial zones are generally separated and buffered from the City's residential land uses by Fanno Creek and the railroad corridor.
  - Industrial zones are generally located east of Fanno Creek, and south of State Highway 217 and Pacific Highway.
  - Areas where industrial and residential zones abut one another are limited:
    - Hall Boulevard between Burnham Street and Hunziker;
    - The single-family homes and apartments near the intersection of 72<sup>nd</sup> and Hunziker;
    - Tigard Street, between Katherine Street and Tiedeman Avenue; and
    - The Industrial park and offices next to Durham Elementary and Tigard-Tualatin High School (school buffers preclude dispensaries in this area).
- The majority of the industrial land in Tigard is zoned I-L and I-P. These two zones are relatively fluid due to their similarity of purpose and shared Comprehensive Plan Designation of Light Industrial, and there is a history of property owners switching from one zone to the other to pursue new market demands and business opportunities when the approval criteria can be met. In the case of marijuana facilities, a property owner may wish to change their zoning from I-L to I-P in order to allow a retail facility on the site.
- Restricting marijuana facilities to the City's industrial zones may not support the goals of the City's 2011 Economic Opportunities Analysis. That report concluded that Tigard has an insufficient amount of industrial land to meet both market demand and community needs, and the City should support actions that result in "land efficient" development, characterized as businesses with higher job densities and the efficient use of land. Of concern is a higher density of marijuana facilities that could displace or preclude other types of employee-dense, industrial land uses within the city's extremely limited industrial lands.
- Restricting marijuana facilities to these four zones would conflict with the desire of potential marijuana business owners to locate on Pacific Highway or Main Street Tigard, which are two of the three principal areas for retail activity in Tigard. The Planning Commission could, however, find marijuana facilities to have special characteristics and apply appropriate siting standards accordingly.

### **Security Requirements under Oregon Medical Marijuana Program and Measure 91.**

Measure 91 does not establish security requirements for marijuana facilities licenses licensed by the OLCC. Those requirements will be determined through forthcoming rulemaking and legislation.

Minimum state-mandated security requirements for medical marijuana dispensaries are summarized below. Design features proposed by staff on January 12 are intended to supplement state mandated security features by focusing on external site security.

- Fully operational alarm system with motion sensors, multiple panic buttons, and external notification to an outside security company;
- Fully operational video surveillance system with mandatory areas of coverage, recording capabilities, battery backups, and archiving standards;
- Installation of a safe or vault;
- Restricted access areas secured by locked doors;
- Commercial grade door locks;
- Electronic data management system;
- A detailed policies and procedures manual and training program regarding operations, security, and transfer of product; and
- Customers cannot consume on premises;

### **Design Incentives for Signage**

Staff was unable to identify code incentives that would achieve the stated desires of the Planning Commission for attractive and tasteful signage specific to marijuana businesses, given the expansive protection given to freedom of speech in Oregon. This issue of signage generally may be better addressed as part of a future examination of sign regulations within Tigard.

### **Additional Public Comment**

Following the January 12 hearing, two comment letters were received and included as Attachments 4 and 5 to this memorandum.

- Peter Brock submitted an email on January 23, 2015 that called for a reduction of the proposed buffer from 500 feet to 200 feet, and believes downtown Tigard to be an appropriate location for a medical marijuana dispensary due to multi-modal access and the current presence of tobacco and alcohol shops.
- Julie Russell submitted two emails on January 18 and January 23 with links to news stories about the impact of marijuana

### **Potential Actions to Consider**

To help the Planning Commission move forward with a recommendation to City Council, the following options may wish to be considered. Each is based upon feedback and questions received during the January 12 hearing. These options are not exclusive, and the commission may adopt one, several, or none of the following:

1. Recommend the text amendments as proposed.
2. Recommend text amendments with an increase or decrease in minimum buffer distances from specified uses or zones.
3. Recommend text amendments to include a minimum distance between marijuana facilities to reduce the density and number of these businesses within the City.
4. Recommend text amendments that restrict marijuana facilities to industrial zones.

### **Attachments:**

1. Measure 91: What it Means for Local Governments; League of Oregon Cities, November 2014.
2. Control, Regulation, and Taxation of Marijuana and Industrial Hemp: Presentation to Legislative Task Force on OLCC; November 19, 2014.
3. Maps - Comparison of Available Sites for Marijuana Dispensaries – 1,000 Foot Buffer Scenario
4. Map – Tigard Zoning: Residential Land Uses Not Permitted
5. Email from Peter Brock; January 23, 2015
6. Emails from Julie Russell; January 18 & 23, 2015